

## REMARKS

Claims 1-37 are pending in the application.

Applicants acknowledge and appreciate that the Examiner has reopened prosecution and removed the finality of the previous Office Action dated January 10, 2008 and Applicants' amendments filed on June 9, 2008 have been entered. Applicants acknowledge and appreciate the Examiner withdrew the 35 U.S.C. §112 rejection of claims 32-34.

### *Claim Rejections – 35 U.S.C. 112*

Claim 5 is rejected under 35 U.S.C. 112, first and second paragraph, as being indefinite and for failing to comply with the written description requirement. Applicants respectfully traverse this rejection.

By the above amendment, the term "by the client" has been removed from claim 5. Applicants submit this claim contains no vague or indefinite language. As for the Examiner's alleged inability to find any disclosure of "the first remote system to generate a response," the subject matter of a claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement. MPEP 2163.02. The person of ordinary skill in the art will understand that generating a response by one or more of the remote systems is sufficiently disclosed by the teaching of receiving a response from the remote system. See, p. 9, lines 22-25; p. 11, lines 2-13; p. 16, lines 12-18; p. 17, lines 7-19; and p. 18, lines 1-7. The person of ordinary skill in the art will understand that a response can only be received from a remote system if it is first generated by the remote system.

Therefore, Applicants request this rejection of claim 5 be withdrawn.

Claims 1-37 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants respectfully traverse this rejection. In the interest of expedited prosecution,

Applicants have addressed some of the Examiner's § 112 rejections by way of amendments. Such amendments, however, should not be construed to mean that Applicants acquiesce with the Examiner's bases.

The Examiner alleged claim 1 lacked antecedent basis for the term "the indication." By the above amendment, this term has been changed to "an indication."

The Examiner alleged claim 1 was vague for reciting the term "that is desired." By the above amendment, this term has been removed.

The Examiner alleged claim 1 was vague for reciting "performing the task responsive to the indication." By the above amendment, this term has been changed to "performing the task responsive to receiving the indication."

The Examiner alleged claim 1 lacked antecedent basis for, and was vague for reciting, the term "at least of one of the remote systems." By the above amendment, this term has been changed to "at least one of the one or more remote systems."

The Examiner alleged claim 1 lacked antecedent basis for, and was vague for reciting, the term "the first remote system to respond." By the above amendment, this term has been changed to "a first remote system to respond." As for the alleged vagueness of "to respond," the person of ordinary skill in the art reading claim 1 would understand that "receiving at least one response from the one or more remote systems" means that at least one of the one or more remote systems responded, i.e., that "to respond" in claim 1, line 10 refers to the at least one response recited in lines 6-9. Therefore, the claim is clear, has antecedent basis, and includes all essential steps.

Appropriate amendments to the other claims have been made in light of the above rejections of claim 1. Applicants submit the bases for these rejections have been removed.

**Claim Rejections – 35 U.S.C. 103(a)**

Claims 1, 3-7, 9-15, 17-19, 28, 29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,192,388 (*Cajolet*), in view of U.S. Publication No. 2002/0169606 (*Bantz*), further in view of what has been known in the art (*Official Notice* or *ON*). Applicants respectfully traverse this rejection.

Claims 35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Cajolet* in view of *Bantz*. Applicants respectfully traverse this rejection.

As explained in the instant Application, remote systems capable of performing a task may respond to an indication that a task(s) is available for processing, and the client system may assign the task to the remote system that responds first. *See* Application, p.14, line 22 to p.15, line 7; p.16, ll. 9-13; p.18, ll. 9-14. By using criteria based on response order, the client system may make fewer, if any, scheduling/delegation decisions, and the need to monitor performance status of the remote systems is reduced. *See* Application, page 21, ll. 11-15. In this way, the client system has shifted the scheduling/delegation responsibility more to the remote systems. Against this general backdrop, the claims are discussed next.

For ease of discussion, claim 1 is discussed first. Claim 1, directed to a method, comprises (1) indicating to one or more remote systems in a distributed system that a task in a task list is available for processing based on a distribution list; (2) receiving at least one response from the one or more remote systems capable of performing the task responsive to the indication; and (3) assigning the task from the task list to the first remote system to respond.

The Examiner admits that *Cajolet* at least does not disclose assigning the task from the task list to the first remote system to respond. Rather, as previously pointed out by Applicants, *Cajolet* teaches a dispatcher 88 (the central machine) that evaluates responses from helping machines (referred to as assistants 86) in deciding which machine to assign the task.

Specifically, *Cajolet* describes that the dispatcher 88 evaluates each problem solving assistant's response relative to other assistant responses based on pre-defined criteria, such as processor speed and available RAM. See *Cajolet*, Fig. 7, items 124-134, Fig. 8, col. 9, line 57 to col. 10, line 6, and col. 11, line 11 to col. 12, line 24. Thus, instead of assigning a task to the remote system that is first to respond, *Cajolet* describes using a complex criteria that evaluates the resources of the helping machine before deciding which helping machine will get the assignment.

While admitting that *Cajolet* does not teach assigning the task to the remote system that is first to respond, the Examiner nevertheless argues that *Bantz* discloses this claimed feature. The Examiner's argument is problematic for several reasons. As an initial matter, the claims call for assigning the task to the system that is first to respond and not simply to the first available workstation as the Examiner contends. In *Bantz*, the workstations do not respond at all to a request. Rather, *Bantz* discloses that a first available call taker workstation will be assigned the task of handling the next call in a call queue. See *Bantz*, ¶[0021]. A call received at the call center is placed in the call queue where it is forwarded to the first free call taker workstation. See *id.* at ¶[0021]. Therefore, because the workstations do not respond to a request, *Bantz* at least does not and cannot teach assigning the task from the task list to the first remote system to respond, as called for by claim 1 of the instant Application.

The Examiner's rejection is problematic for another fundamental reason: the proposed combination of *Cajolet* and *Bantz* teaches away from the claimed invention. It is well established that teaching away by the prior art constitutes *prima facie* evidence that the claimed invention is not obvious. See, *inter alia*, *In re Fine*, 5 U.S.P.Q.2d (BNA) 1596, 1599 (Fed. Cir. 1988); *In re Nielson*, 2 U.S.P.Q.2d (BNA) 1525, 1528 (Fed. Cir. 1987); *In re Hedges*, 228

U.S.P.Q. (BNA) 685, 687 (Fed. Cir. 1986). Moreover, it is also well established that where a modification or combination renders a prior art reference inoperable for its intended purpose, the reference teaches away from the modification or combination. *In re Gordon*, 221 U.S.P.Q. (BNA) 1125, 1127 (Fed. Cir. 1984). That is, if the proposed combination undermines the purpose of the prior art, it cannot be obvious. Here, the Examiner proposes modifying **Cajolet** with the teachings of **Bantz** that would defeat the purpose taught in **Cajolet**. As noted, **Cajolet** discloses using a complex criteria based on the information provided by the helping machines to identify the machine best suited to assist. **Bantz**, on the other hand, discloses that a first available call taker workstation will be assigned the task of handling the next call. The teachings of the two references are thus inconsistent, and modifying the teachings of **Cajolet** (which describes using a complex criteria based on the responses from the helping machine to identify the best suited machine) with those of **Bantz** (which describes using the first available workstation) would render **Cajolet**'s system inoperable for its intended purpose (*i.e.*, selecting the best suited machine based upon a criteria that relies on parameters, such as processor speed and available RAM, of the helping machine).

The Examiner recognizes that **Cajolet** and **Bantz**, separately or together, further fail to teach compilation tasks. Detailed Action, p. 6. To make up for this shortcoming in **Cajolet** and **Bantz**, the Examiner takes **Official Notice** of two facts: that distributing compilation tasks was known, as per Sundararajan, US 6,487,577; and queuing techniques such as First In First Out were known. First, Applicants submit the **Official Notice** of these two facts is inadequate. The Examiner's citation of Sundararajan to support the alleged common knowledge of distributing compilation tasks does not provide the person of ordinary skill in the art with any guidance as to whether the particular teachings of Sundararajan would be useful in the particular inventions as

presently claimed. The Examiner's statement that certain queuing techniques were known does not provide the person of ordinary skill in the art with any guidance as to whether those particular queuing techniques would be useful in the particular inventions as presently claimed.

Also, Applicant respectfully requests that prior art be provided to substantiate the official notice or that an affidavit be filed in accordance with 37 C.F.R. § 1.104(d)(2), which states (emphasis added):

(2) When a rejection in an application is based on facts **within the personal knowledge** of an employee of the Office, the data shall be as specific as possible, and **the reference *must be supported, when called for by the applicant, by the affidavit of such employee***, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

Consequently, Applicant respectfully and reasonably requests the Office to either (1) cite a reference in support of this position, or (2) provide a Rule 104(d)(2) affidavit from the Examiner supporting any facts within the personal knowledge of the Examiner, as also set forth in M.P.E.P. § 2144.03.

Regardless of whether the *Official Notice* was proper, however, the task distribution taught by Sundararajan focuses on use of jobshops published by subcontractor computers to determine which subcontractor computer is to perform the task. Col. 6, lines 1-18 and line 58 to col. 7, line 22; Figure 4. Sundararajan is silent regarding how a task is to be assigned if multiple subcontractor computers' jobshops indicate they are capable of performing the task. Further, Sundararajan teaches assigning a task to a subcontractor computer and then having the subcontractor computer determine whether it can perform the task or not. Col. 7, lines 1-12. Therefore, combining Sundararajan with *Cajolet* and *Bantz* fails to arrive at the presently claimed invention.

Even if the *Official Notice* that distributing compilation tasks is proper, it still fails to provide the person of ordinary skill in the art with any guidance as to how to modify the teachings of *Cajolet* and *Bantz* to arrive at the presently claimed invention for the reasons described above.

Even if the *Official Notice* that First In First Out was known is proper, First In First Out does not apply to the present claims. First In First Out means the earlier of two requests for a resource is the earlier one to be processed by that resource. The at least one response from the one or more remote systems is not a request for a resource, but a statement of the availability of the resource.

Accordingly, for at least the aforementioned reasons, claim 1 and its dependent claims are allowable. Additionally, independent claims 10, 18, 19, 29 and 35, and their respective dependent claims, are also allowable for similar reasons claim 1 is allowable. Moreover, claim 32 is also allowable for similar reasons because it discloses processing a task assigned to the remote system, the remote system being first to respond to the indication from the client system for a given task.

The dependent claims are allowable for additional reasons. For example, claim 2, which depends from claim 1, calls for a distribution list comprising destination addresses associated with the one or more remote systems, wherein indicating to the one or more remote systems comprises providing a message to a router that, responsive to the message, transmits at least a portion of the message to a plurality of the remote systems based on the distribution list. Transmitting a message to a router which in turn transmits at least part of a message to the destination remote systems allows for efficiently routing the indication from the client system. See Application, p.10, ll. 14-25.

Claims 16, 30 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Cajolet-Bantz-ON*, and in view of US Pub. 2007/0011226 (*Hinni*). Applicants respectfully traverse this rejection.

*Hinni* allegedly teaches a multicast request to multiple task handlers. However, this teaching fails to supplement the deficiencies of *Cajolet-Bantz-ON* or *Cajolet-Bantz* discussed above. Therefore, claims 16, 30, and 36 are patentable over these references for the reasons set forth above regarding claims 10, 29, and 35.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Cajolet-Bantz-ON* as applied to claim 1, and further in view of *Harper*. Applicants respectfully traverse this rejection.

Claims 8 and 20-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Cajolet-Bantz-ON* as applied to claim 1, and further in view of *Harper* and *Hinni*. Applicants respectfully traverse this rejection.

The Examiner's rejection of claim 2 fails because *Cajolet*, *Bantz*, the *Official Notice*, and *Harper*, either alone or in combination, do not teach at least one of the claimed features. The Examiner admits that *Cajolet* and *Bantz* do not teach at least the claimed feature of "providing a message to a router", but the Examiner argues that *Harper* teaches this feature in Fig. 2. See Final Office Action, p.14-15. Specifically, the Examiner argues that Fig. 2 shows a gateway (router, according to the Examiner) connected to a dispatcher (client device, according to the Examiner) for transmitting task assignments to servers (remote devices, according to the Examiner). *Id.* at 15. Applicants respectfully disagree. A careful reading of *Harper* reveals that the gateway is not used to transmit task advertisements to the servers, but rather the gateway simply creates a focal point for communicating with the rest of the network. See *Harper*,



¶[0025]. The gateway also forwards *client requests* from the network to the task dispatcher, not task assignments from the task dispatcher to the servers, as suggested by the Examiner. *See id.* at ¶[0026].

Furthermore, *Harper* teaches that the task assignment logic in the task dispatcher assigns tasks to the appropriate server, and the task assignment block is connected directly to each server in the node (*i.e.*, the connection between the servers and the task assignment block does not go through the gateway). *See id.* at ¶[0026]; *See also id.* at Fig. 2. As such, contrary to the Examiner's assertion, *Harper* does not disclose a gateway (router, according to the Examiner) connected to a dispatcher (client device, according to the Examiner) for transmitting task assignments to servers (remote devices, according to the Examiner). In contrast, claim 2 of the instant invention teaches the feature of for a distribution list comprising destination addresses associated with the one or more remote systems, wherein indicating to the one or more remote systems comprises providing a message to a router that, responsive to the message, transmits at least a portion of the message to a plurality of the remote systems based on the distribution list.

Accordingly, for at least the aforementioned reasons, claim 2 is allowable. Moreover, with respect to claims 8 and 20, *Hinni* fails to cure the deficiencies of *Cajolet*, *Bantz*, the *Official Notice*, and *Harper*. Therefore, claims 8 and 20, and the claims depending from claim 20, are also allowable for similar reasons.

Other claims are allowable for additional features recited therein. For example, claim 14, which depends from claim 10, specifies instructions [contained in the storage media] that when executed enable the processor to allow a plurality of remote systems to perform the task in response to determining that a number of responding remote systems exceed a number of

available tasks. By allowing a plurality of remote systems to perform the same task, the client system increases its chances of having the best-suited remote system complete the task.

Claims 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Cajolet* in view of *Jones*, further in view of *ON*. Applicants respectfully traverse this rejection.

*Jones* allegedly teaches reserving a resource after determining the amount of the resource needed for a requested task. However, *Jones* teaches that an activity determines what resources it needs, then sends a request to a resource planner to grant the resources, which the resource planner may grant or withhold. Paragraphs 0034, 0040, 0043. In other words, *Jones* teaches the activity reserves resources *prior* to determining that the resources are acceptable for the activity and that *the reserving is performed at the activity site*. Paragraph 0043. This teaching is contrary to claim 32 and all claims dependent thereon, which recite the step of reserving one or more resources of a remote system *in response to* determining that the remote system is capable of processing a compilation task and *the reserving takes place at the remote system*. *Jones* also fails to supplement the deficiencies of *Cajolet* and *ON* discussed above. Therefore, claims 32-34 are patentable over these references.


### **Conclusion**

Reconsideration of the present application is respectfully requested. In light of the arguments presented above, a Notice of Allowance is respectfully solicited. If for any reason the Examiner finds the application other than in condition for allowance, **the Examiner is requested to call the undersigned attorney** at the Houston, Texas telephone number (713) 934-4064 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

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